

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
1901 Avenue Of The Stars, Suite 1800
Los Angeles, California 90067-6019

Attention: Anton N. Natsis, Esq.

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(Space Above For Recorder's Use)

**ASSIGNMENT AND ASSUMPTION AGREEMENT AND CERTIFICATE OF
SATISFACTION**

This **ASSIGNMENT AND ASSUMPTION AGREEMENT AND CERTIFICATE OF SATISFACTION** ("Agreement") is entered into as of the _____ day of _____, 2006 by and between the CITY OF MILPITAS, a municipal corporation in the State of California ("City"), VERITAS OPERATING CORPORATION, a Delaware corporation ("Veritas") and BRE/MILPITAS L.L.C., a Delaware limited liability company ("Blackstone"). Veritas and Blackstone are collectively referred to herein as the "Parties."

RECITALS:

A. On March 21, 2000, the City Council adopted Ordinance 38.755 approving a development agreement ("Development Agreement") pursuant to Government Code § 65864, et seq., by and between the City and Muriel M. Harris and Joseph A. McCarthy, each as trustees of the MGM Revocable Trust, dated December 14, 1982, as amended, and of the RIM Revocable Trust, dated February 12, 1982, as amended ("McCarthy"). The Development Agreement vested certain development rights in certain property commonly referred to as the McCarthy Ranch Property ("Property") including, but not limited to, the right to development of the Property pursuant to the adopted General Plan and zoning designations, and in conformance with the McCarthy Ranch Design Guidelines and Development Standards dated March 7, 2000 (the "Design Guidelines"), as said rights are more specifically described in the Development Agreement. The Development Agreement, General Plan designation, zoning designation, and Design Guidelines are collectively referred to as the "Project Approvals".

B. On July 6, 2000, the City, McCarthy, and Veritas entered into that certain Partial Assignment and Assumption Agreement, and Certificate of Partial Satisfaction (the "McCarthy Assignment"), whereby McCarthy assigned to Veritas all of its rights in the Development Agreement relating to the vesting of the Project Approvals as applicable to approximately 65 acres of the Property which is described on Exhibit A attached hereto, and incorporated herein by this reference (the "Veritas Parcel"). The City consented to the McCarthy Assignment.

C. Veritas and Blackstone have entered into that certain Agreement of Purchase and Sale ("Sale Agreement") dated July 18, 2006, pursuant to which Veritas intends to sell the Veritas Parcel to Blackstone.

D. The McCarthy Assignment provides that Veritas may assign any of its interests in the Development Agreement (as clarified and set forth in the McCarthy Assignment) to a successor-in-interest as owner of the Veritas Parcel with the written consent of the City.

E. Veritas has agreed to assign to Blackstone its interest in the Development Agreement as to the Veritas Parcel, in conjunction with the sale of the Veritas Parcel, and the City is willing to consent to that assignment ("Assignment").

F. With this Agreement, the Parties also desire to clarify the specific obligations which will be assumed by Blackstone, in connection with the Assignment, and to release Blackstone from responsibility for any other Development Agreement obligations.

G. Furthermore, pursuant to Section 15 of the Development Agreement, Veritas and Blackstone have requested a statement from City regarding the status and effect of the Development Agreement.

H. Veritas and Blackstone are relying on this Agreement in connection with the sale and purchase of the Veritas Parcel, and the allocation and assumption of obligations between Veritas and Blackstone.

NOW, THEREFORE, in consideration of the foregoing recitals and the covenants in this Agreement, the City, Veritas and Blackstone agree as follows:

1. Assignment. As allowed under Section 19 of the Development Agreement on the Effective Date, as defined below, Veritas agrees to assign to Blackstone all of its rights in and obligations under the Development Agreement relating to the vesting of the Project Approvals as applicable to the Veritas Parcel. The vested rights assignment hereunder shall continue in effect for the remaining term of the Development Agreement.

2. City's Consent to Assignment. In accordance with Section 19 of the Development Agreement, the City agrees to the Assignment to be made pursuant to this Agreement.

3. Obligations Assumed by Blackstone. As provided under Section 1.2 and Section 1.9 of the Development Agreement, which allow for the allocation of Development Agreement obligations in conjunction with the Assignment, on the Effective Date of the Assignment, Blackstone shall assume and have the following obligations (as owner and developer of the Veritas Parcel) pursuant to the Development Agreement.

a. Pursuant to Section 3.b. of the McCarthy Assignment, Blackstone shall pay approximately \$125,000 to the City for the area-wide traffic impact fee as said fee is applicable to the remaining development of the Veritas Parcel for research and development uses up to a .35 FAR.

b. Pursuant to Section 3.c. of the McCarthy Assignment, Blackstone shall have the obligation to pay the remaining existing traffic mitigation fee, if any, applicable to the Veritas Parcel.

c. Pursuant to Section 3.d. of the McCarthy Assignment, Blackstone shall contribute approximately \$300,000 to the City toward the cost of remaining onsite or offsite traffic improvements as identified by the traffic impact analysis to be carried out in conjunction with the S Zone approval of the proposed development project.

d. Pursuant to Section 3.e. of the McCarthy Assignment, in carrying out its development on the Veritas Parcel, Blackstone shall demonstrate compliance with the Design Guidelines.

e. Pursuant to Section 3.f. of the McCarthy Assignment, Blackstone shall have the obligation to contribute its pro rata share (on an acreage basis) to the cost of the shuttle program pursuant to Section 6.1 of the Development Agreement.

f. Pursuant to Section 3.g. of the McCarthy Assignment, Blackstone shall have an obligation to provide reasonable R&D recreational facilities pursuant Section 6.2 of the Development Agreement.

4. Limitation on Blackstone's Assumed Rights and Obligations. Except as set forth in Section 3 above, Blackstone shall have no obligation under the Project Approvals and the Development Agreement for any dedications, exactions, fees, assessments, taxes, charges, or other costs related to development of the Veritas Parcel, or the Property, except for the normal and reasonable uniformly applicable fees charged to recover the administrative costs of processing its permit applications.

5. Nonliability of Veritas. Veritas shall not be liable for and shall be released from any of the Development Agreement obligations assumed by Blackstone pursuant to this Agreement but only to the extent said obligations have been assumed by Blackstone.

6. Effective Date of Assignment. The Assignment shall be effective upon final execution by the Parties (the "Effective Date").

7. Certificate of Satisfaction. In accordance with Section 15 of the Development Agreement, City states that, as of the date of this Agreement:

a. The Development Agreement is in full force and effect.

b. There are no defaults affecting the Development Agreement.

c. The Development Agreement, and any rights and obligations thereunder, have not been assigned or assumed except as provided in this Agreement.

d. Except as expressly provided in Section (e) below, all obligations to have been performed in conjunction with development of the Property have been satisfied to the extent required, including but not limited to the following:

- Pursuant to Section 3.a. of the McCarthy Assignment, Veritas has contributed \$75,000 to the City as reimbursement for its cost of installing a traffic signal at the north end of Ranch Drive at its intersection with McCarthy Boulevard.
- Pursuant to Section 3.b. of the McCarthy Assignment, Veritas has paid approximately \$125,000 to the City for the area-wide traffic impact fee as said fee is applicable to the existing development of the Veritas Parcel for research and development uses up to a .35 FAR.
- Pursuant to Section 3.c. of the McCarthy Assignment, Veritas has paid the existing traffic mitigation fee applicable to the existing development on the Veritas Parcel.
- Pursuant to Section 3.d. of the McCarthy Assignment, Veritas has contributed approximately \$300,000 to the City toward the cost of onsite or offsite traffic improvements as identified by the traffic impact analysis carried out in conjunction with the S Zone approval of the existing development on the Veritas Parcel.
- Pursuant to Section 3.e. of the McCarthy Assignment, in carrying out its existing development on the Veritas Parcel, Veritas has complied with the Design Guidelines.
- Pursuant to Section 3.g. of the McCarthy Assignment, Veritas has provided reasonable R&D recreational facilities pursuant Section 6.2 of the Development Agreement in connection with the existing development on the Veritas Parcel.
- Pursuant to Section 3.h. of the McCarthy Assignment, Veritas has contributed the pro rata share (on an acreage basis) of the Veritas Parcel of the cost of the Coyote Creek Levee Trail and Trail access Construction pursuant to Section 6.3 of the Development Agreement.
- Pursuant to Section 3.i. of the McCarthy Assignment, Veritas has accommodated public parking as required pursuant to Section 6.6 of the Development Agreement.
- Pursuant to Section 3.j. of the McCarthy Assignment, Veritas has provided a jogging path and par course stations along the portion of the Veritas Parcel adjacent to McCarthy Boulevard consistent

with the master plan submitted by McCarthy pursuant to Section 6.7 of the Development Agreement.

e. The only obligations under the Development Agreement remaining to be performed in conjunction with development of the Property are the following:

- Pursuant to Section 3.b. of the McCarthy Assignment, Blackstone shall pay approximately \$125,000 to the City for the area-wide traffic impact fee as said fee is applicable to the remaining development of the Veritas Parcel for research and development uses up to a .35 FAR.
- Pursuant to Section 3.c. of the McCarthy Assignment, Blackstone shall have the obligation to pay the remaining existing traffic mitigation fee, if any, applicable to the Veritas Parcel.
- Pursuant to Section 3.d. of the McCarthy Assignment, Blackstone shall contribute approximately \$300,000 to the City toward the cost of remaining onsite or offsite traffic improvements as identified by the traffic impact analysis to be carried out in conjunction with the S Zone approval of the proposed development project.
- Pursuant to Section 3.e. of the McCarthy Assignment, in carrying out its development on the Veritas Parcel, Blackstone shall demonstrate compliance with the Design Guidelines.
- Pursuant to Section 3.f. of the McCarthy Assignment, Blackstone shall have the obligation to contribute its pro rata share (on an acreage basis) to the cost of the shuttle program pursuant to Section 6.1 of the Development Agreement.
- Pursuant to Section 3.g. of the McCarthy Assignment, Blackstone shall have an obligation to provide reasonable R&D recreational facilities pursuant Section 6.2 of the Development Agreement.

8. Binding Effect. Pursuant to Section 20 of the Development Agreement, this Agreement, and all the terms and conditions hereof, shall be binding upon and inure to the benefit of the parties hereto and their respective assigns, heirs or other successors in interest, and may be relied on by Veritas, Blackstone and any lender of Blackstone. The terms and conditions of this Agreement shall remain in full force and unaffected notwithstanding (i) the subsequent termination of, or amendment to, the Development Agreement applicable to the remaining portion of the Property (i.e., that portion of the Property other than the Veritas Parcel), and/or (ii) any change in the General Plan, Zoning Ordinance or Design Guidelines which affects the remaining portion of the Property.

9. Further Assignment. Blackstone (after receiving the Assignment), and its respective successors and assigns, shall be entitled to assign its rights and obligations, subject only to City's consent, which consent shall not be unreasonably withheld, and to other applicable provisions affecting such Assignment as set forth in Section 19 of the Development Agreement.

10. Recordation. After its execution by the City, Veritas and Blackstone, this Agreement shall be recorded with the Santa Clara County.

11. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, this Agreement has been executed to be effective on the date specified herein.

City: CITY OF MILPITAS, a municipal corporation in
the State of California

By: _____

Its: _____

Parties: VERITAS OPERATING CORPORATION,
a Delaware corporation

By: _____

Its: _____

BRE/MILIPITAS L.L.C., a Delaware limited
liability company

By: _____

Its: _____

STATE OF _____
COUNTY OF _____

On this _____ day of _____, 2006, before me,
_____, a Notary Public, personally appeared
_____, personally known to me (or proved to me
on the basis of satisfactory evidence) to be the person(s) whose name(s) are/is subscribed to the
within instrument, and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s), or
the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature of Notary

(Seal)

STATE OF _____
COUNTY OF _____

On this _____ day of _____, 2006, before me,
_____, a Notary Public, personally appeared
_____, personally known to me (or proved to me
on the basis of satisfactory evidence) to be the person(s) whose name(s) are/is subscribed to the
within instrument, and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s), or
the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature of Notary

(Seal)

STATE OF _____
COUNTY OF _____

On this _____ day of _____, 2006, before me,
_____, a Notary Public, personally appeared
_____, personally known to me (or proved to me
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within instrument, and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s), or
the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature of Notary

(Seal)